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SERVICE DATE - NOVEMBER 21, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-534 (Sub-No. 1X)

LAKE STATE RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN ALPENA COUNTY, MI

Decided: November 17, 2000

On November 18, 1997, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the Michigan Department of Natural Resources (MDNR) to negotiate an interim trail use/rail banking agreement with Lake State Railway Company (Lake State) for an 8-mile line of railroad between milepost 0.0 near Alpena, and milepost 8.0 near Hillman, in Alpena County, MI.¹ Extensions of the negotiation period were granted by decisions served May 15, 1998, November 19, 1998, May 13, 1999, November 5, 1999, and May 12, 2000. The latest extension was scheduled to expire on October 31, 2000.

On November 2, 2000, MDNR filed a request to extend the negotiating period for an additional 180 days to continue negotiations with the railroad. By letter filed November 15, 2000, Lake State also requests an extension of the NITU for an additional 180 days. The parties state that negotiations are continuing and expect to complete an agreement within 180 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for an additional 180 days from October 31, 2000.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ Notice of the exemption was served and published in the Federal Register on October 17, 1997 (62 FR 54155-56).

² See Rail Abandonments Supplement Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).

It is ordered:

1. The negotiating period under the NITU is extended to April 29, 2001.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary